

REMARKS

Of claims 1-34 which were contained in the pending application, claims 21 and 22 are cancelled. The informalities contained claims 2, 3, 5, 8-10, 15, 20, 24 and 32 have been corrected (§1 of the 02052008 office action).

Rejections Under 35 U.S.C. §112, second paragraph

The Examiner has rejected claims 1 and 25-33 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention.

The Examiner maintains that claim 1 is indefinite since it is unclear what is intended by “incorporated gum base” (line 7). Claim 1 is now amended to recite “incorporated in the gum base”.

The Examiner also states that there is no antecedent basis in claim 23 for “the chewing gum granulate” (claims 25, 26, 28 and 29). Claim 25 has been re-drafted as an independent claim, with no dependency on claim 23.

The Examiner states that claim 25 is indefinite since it is not clear what is intended by “on conventional gum base” (lines 4-5). Claim 25 has been amended to now recite “of a conventional gum base”.

The Examiner states that claims 25-33 should be method claims since each depends on method claim 23. Claim 25 is now an independent claim. Claims 26-29 correctly depend from claim 25. Claims 30 and 33 have been amended to depend from claim 25.

Accordingly, the rejections under 35 U.S.C. §112, second paragraph, have been overcome and should be withdrawn.

Rejections Under 35 U.S.C. §102(b)

(¶5) The Examiner has rejected claims 1-5, 8-11, 15 and 23-32 under 35 U.S.C. §102(b) as being anticipated by Yang (EP 0221850, cols. 3, 7-11) or Cherukuri et al. (EP 0 151 344) (cols. 2-8 and claim 1) maintaining that both references disclose compressed chewing gum tablets composed of granules including a synthetic elastomer gum base. The Applicants respectfully traverse his rejection.

As an initial matter, in order for a §102 rejection to be valid, the art cited must teach all limitations required by the claims that define the present invention.

Claims 1, 23 and 25 of the present invention recite a chewing gum center comprising a compression of gum base granules and chewing gum additives, wherein the additives comprise sweeteners and flavors.

Yang (EP 0 221 850) discloses a flavored tableted chewing gum. Yang does not teach a compressed chewing gum tablet having a center comprising granules and additives such as sweeteners and flavors. Cherukuri et al. (EP 0 151 344) teaches a chewing gum composition suitable for use in the preparation of a chewing gum tablet, the gum composition comprising a blended mixture of chewing gum granules which comprise a chewing gum base, a grinding aid and a sweetening agent. Neither reference discloses a compressed chewing gum tablet *having a center* comprising granules and additives comprising sweeteners and flavors.

Since Yang and Cherukuri et al. do not teach or suggest every element of the present invention as claimed, the Examiner's rejection under 35 USC §102(b) should be withdrawn.

Rejections Under 35 U.S.C. §103(a)

(¶7) The Examiner has rejected claims 6, 7, 12-14, 16-20, 33, and 34 under 35 U.S.C. §103(a) as being unpatentable over Yang or Cherukuri et al. In making this rejection, the Examiner maintains that finding the optimum water content of the gum tablet (claim 6) and the optimum amount of each component in the gum tablet (claims 7, 12-14 and 20) would require nothing more than routine experimentation by one skilled in the art. In addition, the Examiner also argues that it would have been obvious to use the magnesium stearate cited in either Yang or Cherukuri et al. as a lubricant in the outer layer of the tablets since the purpose of the magnesium stearate is to reduce friction between the inner die wall and the tablet edge during ejection and to prevent capping.

The Examiner maintains that based upon the teachings of Yang or Cherukuri et al. the optimum water content of each component in the gum tablet would require nothing more than undue experimentation by one skilled in the art. The Applicants respectfully traverse this rejection. Yang teaches a tableted chewing gum having a water content of 2%-5% (w/w), which is achieved through the use of at least one encapsulated ingredient and it is the use of the at least one encapsulated active substance that allows the gum material to be processed at temperatures below the freezing point of water, prior to compression into tablets. (page 2, lines 42-46). Cherukuri et al teaches a convention chewing gum having a moisture content of about 2%-8% (w/w) which can be granulated using a grinding aid and a compression aid.

In contrast to Yang and Cherukuri et al., the present invention is directed to what might be called a “hybrid” chewing gum tablet (see claims 1, 23 and 25, and paragraph [0014] of the pending application), wherein this chewing gum comprises

two components - one component having flavoring and/or active ingredients incorporated in the gum base granules, and a second component comprising conventional gum base granules. The water content of the present invention is less than 5%. One skilled in the art reading Yang and/or Cherukuri et al. would understand that in order to have a water content greater than at least 2%, would require special formulating techniques with encapsulation of active ingredients and/or the use of compression aids when a conventional gum base is used. However, as stated earlier, the present invention is a “hybrid” gum tablet, comprising compressed gum base granules as well as a conventional gum base and in order to achieve a water content of less than 5%.

The present invention does not rely on encapsulation of ingredients or the use of compression aids (for the conventional gum base portion) for the formation of the chewing gum tablet. In fact, the prior art teaches away from high water content tableted gums having a non-traditional gum base, with no encapsulation of ingredients and/or no added compression aids in the formulation of a conventional gum base. Thus, there is no teaching, suggestion or motivation by either Yang or Cherukuri et al. that the “hybrid” chewing gum tablet of the present invention could be formed having a water content of less than 5%, without the use of encapsulation of ingredients and/or the use of compression aid compounds when using a conventional gum base.

Consequently, in view of the above arguments, the rejections under 35 U.S.C. §103(a), have been overcome and should be withdrawn.

Double Patenting Rejection

Claims 1-20 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-27, 32 and 33 of co-pending US application 10/520,173.

Upon indication of allowable subject matter in this case, Applicants will file the appropriate terminal disclaimers in order to overcome these rejections.

The present application as amended herein, is now in form for allowance and early reconsideration and allowance of the claims, as currently pending, is earnestly solicited.

Respectfully submitted,

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